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Supreme Court, U.S.
FILED

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No. ___ OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

Michelle Leigh Selgas,

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent.

On Petition for Writ of Certiorari To The United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Michelle Leigh Selgas
Petitioner *pro se*
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Petitioner in propria persona

April 2007

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QUESTIONS PRESENTED

1. Whether the Fifth Circuit erred by departing from the fundamental principles of judicial review by overlooking the minimum standards related to Due Process for Collections of tax mandated by Congress [codified at I.R.C. §6330(c)(1)], which requires review of the "verification from the Secretary ['a written declaration made under the penalties of perjury', see I.R.C. §6065] that the requirements of any applicable law or administrative procedure have been met"?

2. Whether the "Due Process" provisions of the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA") overrule this Courts long standing precedence that the collection of tax by distraint of personal property prior to any due process of law is lawful so long as a hearing is granted thereafter?

3. Whether the RRA guarantees (to the person who timely requests a hearing) a right to a fair hearing before an appeals officer, prior to any lien, levy or distraint of personal property for collection of taxes can occur?

4. Whether RRA, codified in part at I.R.C. §6330(c)(1), which states "The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met", is a congressional mandate to the Internal Revenue Service Office of Appeals that creates the "minimum standard" for Due Process for Collection hearings?

5. Is a employee of the Internal Revenue Service who lacks delegation of authority authorized to "send notice of such deficiency to the taxpayer by certified mail or registered mail", pursuant to I.R.C. §6212(a)?

LIST OF ALL PARTIES

The caption of the case in this Court contains the names of all parties (Petitioner: "Michelle Leigh Selgas" and Respondent: "Commissioner of Internal Revenue").

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PETITION FOR WRIT OF CERTIORARI

Michelle Leigh Selgas respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the United States Tax Court, as affirmed (Affirmance Without Opinion) by the United States Court of Appeals for the Fifth Circuit. This is a case of first impression requiring the exercise of this Court's supervisory power to eliminate the confusion in the Circuit Courts [see *Living Care Alternatives of Utica, Inc. v. United States*, 411 F.3d 621 (6th Cir. 2005)] created by the enactment of the "Due Process" provisions of Sec. 3401 of Subtitle E of Title III of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, §3401, 105th Cong., 2d Sess., 112 STAT. 685, 746-750 ("RRA98"), as codified in part at I.R.C. §6330. The RRA98 overruled nearly 130 years of precedence that the Circuit Courts have relied upon to make their Due Process decisions relating to the collection of tax by distraint; thereby leaving the Circuit Courts rudderless and wandering in a sea of uncertainty until such time as this Court:

1) states with certainty that the "Due Process" provisions of Sec. 3401 of Subtitle E of Title III of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, §3401, 105th Cong., 2d Sess., 112 STAT. 685, 746-750 ("RRA98"), as codified in part at I.R.C. §6330, overrules this Courts long standing precedence that the collection of tax by distraint of personal property prior to any due process of law, is lawful so long as a hearing is granted thereafter;

2) resolves the conflict between the statutory Due Process provisions enacted into law at Pub. L. 105-206, §3401(b) Part 1 Sec. 6330(c)(1), 112 STAT. 685, 748, codified at I.R.C. §6330(c)(1), and the regulations promulgated by the Secretary as Tres. Reg 301.6330-1(e); and

3) enforces the minimum standards for judicial review of Due Process for Collection hearings

mandated by Congress in RRA98, codified at I.R.C. §6330(c)(1), which unequivocally requires a review of the "verification from the Secretary ['a written declaration made under the penalties of perjury', see I.R.C. §6065] that the requirements of any applicable law or administrative procedure have been met", prior to any collection of tax by distraint.

OPINIONS BELOW

A copy of the Opinion enter September 20, 2005, by Special Trial Judge, D. Irvin Couvillion, of the United States Tax Court is attached as Appendix A.

A copy of the Fifth Circuit's Affirmance Without Opinion (per Jolly, J., Higginbotham, J., and Dennis, J., Circuit Judges) as entered on December 11, 2006 is attached as Appendix B.

A copy of the Fifth Circuit's denial for rehearing (per Jolly, J., Higginbotham, J., and Dennis, J., Circuit Judges) as entered on January 23, 2007 is attached as Appendix C.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered its Affirmance Without Opinion on December 11, 2006. Appx B. Petitioner's timely petition for rehearing was denied by Order filed January 23, 2007. This petition is being filed on or before the 90th day thereafter. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND FEDERAL STATUES INVOLVED[1]

The Fifth Amendment to the Constitution of the United States provides, in pertinent part: "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

RRA98 §3401(a), I.R.C. §6320, NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN.

...

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

...

"(c) MATTERS CONSIDERED AT HEARING.—In the case of any hearing conducted under this section—

"(1) REQUIREMENT OF INVESTIGATION.—**The appeals officer shall at the hearing obtain verification from the Secretary** that the requirements of any applicable law or administrative procedure have been met. [emphasis added]

RRA98 §3401(b), I.R.C. §6330, NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

...

"(b) RIGHT TO FAIR HEARING.—

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[1] Sec. 3401 of RRA98 is cited in its entirety in Appx. D and the remaining Statutes excerpts cited in this section, are set forth in their un-excerpted form in Appx. E to this Petition.

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

...

"(c) MATTERS CONSIDERED AT HEARING.—In the case of any hearing conducted under this section—

"(1) REQUIREMENT OF INVESTIGATION.—**The appeals officer shall at the hearing obtain verification from the Secretary** that the requirements of any applicable law or administrative procedure have been met. [emphasis added]

I.R.C. §6201. Assessment authority

(a) Authority of Secretary

The Secretary is authorized and required to make the inquiries, **determinations**, and assessments of **all taxes** (including interest, additional amounts, additions to the tax, and assessable penalties) **imposed by this title**, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. **Such authority shall extend to and include the following**:

(1) **Taxes shown on return**

The Secretary shall assess all taxes determined by the taxpayer or **by the Secretary** as to which **returns** or lists are **made under this title.**[emphasis added]

I.R.C. §6020. Returns prepared for or executed by Secretary

...

(b) Execution of return by Secretary

(1) **Authority of Secretary to execute return**

If any person fails to make any return required by any internal revenue law or regulation made

thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the **Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.**

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes. [emphasis added]

I.R.C. §6211. Definition of a deficiency

(a) In general

For **purposes of this title in the case of income,** estate, and gift taxes imposed by subtitles A and B and excise **taxes imposed by** chapters 41, 42, 43, and 44 the term "deficiency" means the amount by which the tax imposed by **subtitle A** or B, or chapter 41, 42, 43, or 44 exceeds the excess of -

(1) the sum of

...

(B) **the amounts previously assessed** (or collected without assessment) **as a deficiency,** over

...[emphasis added]

I.R.C. §6212. Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 **he is authorized to send notice** of such deficiency to the taxpayer **by certified mail or registered mail.** Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office. [emphasis added]

STATEMENT OF THE CASE

This case arises out of the United States Tax Court erroneously granting summary judgment in favor of the Respondent while substantial issues of material fact (related to the questions presented) are still in dispute.

The Petitioner, a housewife living in the state of Texas, was sent a Collection Due Process (CDP) hearing scheduling notice on August 9, 2004 and a subsequent follow-up notice on August 23, 2004, both from Wallace G. Banks, a Revenue Officer of the Internal Revenue Service, indicating that the Petitioner's requested CDP hearing would take place via telephone at 1:00 p.m. on August 30, 2004. At approximately 10:00 a.m. on August 30, 2004 (three hours prior to the "noticed" CDP hearing time) Revenue Officer Banks called Wayne A. Paul, the Petitioner's Certified Public Accountant, to inform him that the CDP hearing was going to be held immediately and asked Mr. Paul if Michelle L. Selgas, the Petitioner, was available. Mr. Paul responded by saying: "No, we cannot hold the CDPH [CDP Hearing] right now as I am not in my office, nor is Michelle Selgas available." Mr. Paul then asked Mr. Banks to call back at the pre-scheduled [notice] time of 1:00 p.m. for the hearing or to reschedule the hearing for a later date and time. There was no subsequent contact made by any IRS personnel for the actual 1:00 p.m. scheduled hearing or a rescheduling thereof.

An examination of the constitutional due process and the statutory "Due Process for Collection" requirements, as clearly and unambiguously mandated by Congress in the RRA98,are summarized below:

Constitutional Due Process Requirements

This Court has held that "due process" requires:

1. "Notice"
2. "A fair opportunity to participate or be heard before an impartial panel or party"

Statutory Due Process for Collection Requirements

Sec. 6330 of the RRA98 (112 STAT. 685, 747-749) mandates the following Due Process for Collection items:

1. "Right to Fair Hearing";
2. The "hearing shall be held by the Internal Revenue Service Office of Appeals";
3. Hearing will be before an impartial "appeals officer";
4. The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

Thus, based upon the due process requirements outlined above, which are shown in combination with the evidence from the record in the table below, it becomes patently clear that the Tax Court erred in accepting one of the Respondent's summary judgment claims that a Due Process for Collection hearing had been held.

Due Process Requirements	Actual Events as it relates to the Petitioner	Pass or Fail
Notice of Hearing	Notice scheduled hearing for 1:00 p.m. on 08/30/2004 a call from Revenue Officer Banks came in at 10:00 a.m.	Failed
Fair Opportunity	No hearing took place; thus no opportunity to be heard was given.	Failed
Fair Hearing	No hearing took place.	Failed
Rep. from IRS Appeals Office	Revenue Officer Banks was from the IRS Settlement Office of the Office of Appeals	(?)
IRS Appeals Officer (GS-0930)[2]	10:00 a.m. call initiated by a Revenue Officer (GS-1169)[2]	Failed
Verification by Secretary at hearing	No hearing took place, and nothing indicates that the Secretary made a "verification"	Failed

As a result of the Tax Court's error, the Petitioner was denied a legitimate judicial forum to address the substantial issues of material fact still in dispute in this case, which in part resulted from the Respondent's failure to ensure that a duly authorized appeals officer[2] held the Petitioner's scheduled Due Process for Collection hearing, and in part by the conflicting language between the enacted law codified at I.R.C. §6330(c)(1) and the Treas. Reg. promulgated under 301.6330-1(e). The result of the confusion was a failure of an appeals officer at the hearing to obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met. Without verification from the Secretary that the requirements of any applicable law or administrative procedure have been met, false and unsupportable claims – caused for example by, erroneous computer entries in a master file, over-zealous employees looking to make a name for themselves, or retaliation for complaints against IRS employees – could appear as valid under the Court's presumption that all IRS documents are prima facie good. Such is the case in chief.

For example, the declaration of Wallace Banks' contains several factual errors and omissions, including but not limited to:

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[2] I.R.C. §6330(c)(1) mandates that an "appeal officer shall at the hearing obtain verification from the Secretary ..." The Office of Personnel Management and the Department Of Treasury Official Personnel Office Actions categorize "appeals officers" under the "Position Classification Standard" of GS-0930. Wallace Banks was in the Position Classification Standard of GS-1169, which authorized him to participate in any resulting appeals proceedings as an expert witness to give evidence to sustain the Government's position. Not to hold the hearing as an impartial "appeals officer". [U.S. Office of Personnel Management, Doc. TS-126; www.opm.gov/fedclass/gs1169.pdf]

1) Mr. Banks' declaration that he is a "settlement officer", is in conflict with Secretary's copy of his Official Government Employment Record, SF-50B form, which indicates that he is a Revenue Officer;
2) Mr. Banks' declaration: "*I made the determination ... to permit the collection action to proceed. The reasons for, and the facts underlying, my determination are found in the Notice of Determination, dated September 1, 2004, a true and correct copy of which is attached hereto as Exhibit A.*"
   a. However, the face of said "*Notice*" is signed by David Lowell, Appeals Team Manager, indicating that Mr. Lowell made the "determination" (not Mr. Banks) based upon an "attached statement show[ing], in detail, the matters we considered at your Appeals hearing and our conclusions about them." Said "attached statement" is an undated, unsigned and unverifiable document constituting hearsay.

   Additionally the Declaration of Mr. Lowell indicates that "*on August 31. 2004*" he reviewed the "*Attachment to the Determination Letter prepared by Settlement Officer Banks*", which is in conflict with the Declaration of Mr. Banks, which states: "*The reasons for, and the facts underlying, my determination are found in the Notice of Determination, dated September 1, 2004*". Hence Mr. Banks claims to have made his determination the day after Mr. Lowell claims to have reviewed it. Thus, one or both of their declaration statements is erroneous or false.
   b. Further the "*Attachment to the Determination Letter prepared by Settlement Officer Banks*" is erroneous, including the statement that "*[t]he IRS did post a Statutory Notice of*

Deficiency / 90-day letter TC 494 indicator to the taxpayer's individual master file." The simple truth is the individual master file records supplied by the Secretary's disclosure office to the Petitioner dated, "07-25-2003", "Dec 11, 2003", "09-03-2004" and "09-29-2004" show that there never was a Statutory Notice of Deficiency/90-day letter TC 494 indicator posted to the individual master files pertaining to the Petitioner. Hence Mr. Banks and Mr. Lowell relied upon erroneous information to make their determination.

3) There is no indication in either Mr. Lowell's or Mr. Banks' declarations or in the purported "Notice of Determination" that "*The appeals officer ... at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met*" as mandated by Congress and codified at I.R.C. §6330(c)(1). Rather, the purported "Notice" states: "*Based on the information available, it has been concluded that all required laws and procedures have been followed.*" Thus, demonstrating that no verification by the Secretary was made.

Had the Respondent fulfilled his duty to review the complete administrative record, *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 419 (1971) , or used a little wisdom and common sense to review the administrative record files obtained by the Petitioner from the Secretary's disclosure office[3], he wouldn't have

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[3] The Petitioner made nearly ninety Freedom of Information Act (FOIA) requests related to administrative record documents maintained by the Secretary on the Petitioner in this matter. The Secretary's disclosure office provided the Petitioner with documents, which include but are not limited to those that indicate: 1) that I.R.S. employees involved in this case were

been duped into believing the erroneous, unsupportable and unsubstantiated entries in the computer master file records pertaining to the Petitioner. Neither would he have been deceived into "*carte blanche*" acceptance of what is written on the face of an unsworn or unsubscribed document.

Additionally other documents obtained through FOIA erroneously assert that the Petitioner, a Texas housewife and mother of two children, has a purported tax liability arising from some non-existent tax liability[4] of her husband. The administrative record is replete with documents that indubitably show that the Petitioner has no liability of tax due and owing to the United States[5] and that the Secretary did not send the Petitioner a notice of deficiency. Had the Petitioner been actually given lawful and meaningful due process, this petition would be unnecessary.

Did the Tax Court err in granting the Respondent's motion for summary judgment? Yes – As discussed above, the record shows that substantial issues of material fact are still in dispute, and were erroneously resolved against

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operating outside of their delegated authority to send certain types of notice; 2) that the Secretary did not make any returns, pursuant to I.R.C. §6020(b), for the Petitioner from which a determination could be made; 3) that the Secretary did not send the Petitioner any notice[s] of deficiency; 4) that some of the Respondent's employees "labeled" documents pertaining to the Petitioner with the words "constitutionally challenged" as a method to invoke discriminatory behavior in the Respondent.

[4] The United States Tax Court, dismissed in the Petitioner's husband's case (*Thomas Drennan Selgas v. Commissioner of Internal Revenue*, United States Tax Court 9188-04L (2005)) dealing with the same years and facts for lack of jurisdiction.

[5] On April 2, 2007, while drafting this petition, the Respondent sent Notice Number "CP49" to the Petitioner indicating that she has an "Overpayment" of tax for some of the year(s) that Revenue Officer Banks and Appeals Officer Lowell purportedly determined that she had a deficiency.

the Petitioner by the Tax Court. The granting summary judgment is not a question of discretion, but of law. Disputed facts have to be decided in favor of the non-moving party as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Accordingly, this case must be REVERSED and REMANDED for further proceedings.

The second issue in this case is one of subject matter jurisdiction, which the Petitioner contends that the Tax Court lacked for two reasons: 1) the Secretary failed to send the Petitioner notice[s] of deficiency pursuant to I.R.C. §6212(a); and 2) the Petitioner was not given a due process for collection hearing pursuant to I.R.C. §6330, as discussed in great detail above.

In reference to the Secretary's failure to send the Petitioner notice[s] of deficiency pursuant to I.R.C. §6212(a), the Petitioner obtained substantive documents from the Secretary's disclosure, which included but not limited to: 1) individual master files records pertaining to the Petitioner that lack any Statutory Notice of Deficiency/90-day letter TC 494 indicator; 2) the Official Government Employment Records, SF-50B forms, of Cherry Elder and Sharon K. Brown, showing that neither held the required "Position/Title" specified in Delegation Order No. 4-8 to act for or on behalf of the Secretary pursuant to I.R.C. §§6212(a) and 7701(a)(11)(B)-(12)(A)(i) to send a notice of deficiency; and 3) documents showing that the Secretary did not make or examine any returns to substantiate a deficiency. Thus the Tax Court lacked jurisdiction to grant the Respondent's Motion for Summary Judgment. The Tax Court's jurisdiction is predicated by the Secretary sending the Petitioner a lawfully valid notice of deficiency, which was not and has not been done in this case. Accordingly, this case must be REVERSED and REMANDED with SUPERVISION.

The third issue in this case is a Constitutional issue of due process of law, which the Petitioner has been denied. The Fifth Amendment to the Constitution of the United

States of America guarantees that "no person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The Petitioner has been denied due process at every step in the administrative process thus far. Her constitutionally guaranteed right, which has now been statutorily defined to correct the evils, wrongs or unnecessary harshness as a result of the misapplication of law [*Springer v. U S*, 102 U.S. 586, 594(1880)], to be afforded a fair opportunity for hearing in connection with the collection of taxes prior to distraint of personal property has been denied. The Respondent failed in his statutory duty, pursuant to I.R.C. §§6320(b), 6330(b)-(c), 6331(j)(2)(A), to obey the law and grant the Petitioner a due process collection hearing.

The government's right of the collection of taxes by distraint of personal property is lawful, only upon the verification from the Secretary that the requirements of any applicable law or administrative procedure have been met and a valid assessment exists. It is indubitably clear from the documents the Petitioner received from the Secretary's disclosure office[3] that the Secretary made no verification, no determinations, no assessments, nor sent the Petitioner notices of deficiency. Further, the Respondent failed to examine and process the returns made by the Petitioner through counsel, and the Secretary did not make any returns for the petitioner, pursuant to I.R.C. §6020(b), either type of return being necessary for a lawful determination of a deficiency to exist, pursuant to I.R.C. §§6201(a)(1), 6211, 6212. Hence, without examining a return, no determination can be made, no notice of deficiency can be sent and no assessment can exist. Additionally, the Petitioner, being denied both an administrative appeals hearing and a due process collection hearing – which mandates that the "appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any

applicable law or administrative procedure have been met" – further exemplifies that no verification was done.

In summary, common sense and reason dictate that the Petitioner does not have an outstanding tax liability to the United States government arising from some unpaid and unidentified tax liability of her husband, since the Secretary never established that her husband had any income from which an outstanding tax liability to the United States government was owed.[4]

REASONS FOR GRANTING WRIT

I. THE ENACTMENT OF THE "DUE PROCESS" PROVISIONS OF LAW IN THE RRA98, CODIFIED AT I.R.C. §§6320 AND 6330, HAVE LEFT THE LOWER COURTS STRUGGLING TO DETERMINE WHAT THE MINIMUM JUDICIAL REVIEW STANDARDS SHOULD BE FOR CASES ARISING OUT OF A COLLECTION DUE PROCESS HEARING.

One reason for this confusion stems from this Court's long standing Precedence that:

> "[t]he right of the United States to collect its internal revenue by summary administrative proceedings ... [where] ... adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained", *Phillips v. C.I.R.*, 283 U.S. 589, 595 (1931).

This Court's holding on the due process requirements relating to the collection of tax has always been contentious because it appears to fly in the face of the plain unambiguous language of the Fifth Amendment to the Constitution of the United States of America which, in part, states "no person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." However, with the enactment of the RRA98, Congress has now mandated due process requirements of law relating to the collection of tax in conformity with the language and general public's understanding of the Fifth Amendment. That is, by enacting RRA98, Congress has corrected the due process evils that existed for nearly 130 years as it relates to the collection of tax by distraint, which were spoken of by this Court when it said: "*If the laws here in question involved any wrong or unnecessary harshness, it was for Congress,*

or the people who make congresses, to see that the evil was corrected. The remedy does not lie with the judicial branch of the government." *Springer v. U S*, 102 U.S. 586, 594 (1880). Hence, the due process provisions mandated in RRA98 have done away with the evils of the collection of tax prior to adequate opportunity of due process, which, in the past, bound this court to render decisions, such as *Springer* and *Phillips*, contrary to current law and the plain language and general public's understanding of the due process clause of the Fifth Amendment. Yet, the United States Court of Appeals for the Fifth Circuit does not recognize this change in the law; it simply finds that any such tax related administrative due process claims or arguments "do not merit any serious consideration"; *Rayner v. Commissioner*, Footnote 9, No. 02-60565 (5th Cir. 2003).[6] Thereby, explaining the lack of a substantive record from the 5th Cir. in this matter. That is, logic demands that since the 5th Cir.'s standing precedence in tax related due process claims "*do not merit any serious consideration*", no substantive review of the issue was made and, thus, no substantive record could be created.

The other reason for the lower Courts' confusion, which was eloquently stated by the 6th Cir.:

> "**The method or standards for judicial review of these hearings [CDP hearings] is not yet settled, hence the problems in these cases**. Prior to this Act, the IRS had the right to levy on taxpayer property without any prior opportunity for a hearing." *Living Care Alternatives of Utica, Inc. v. United States*, 411 F.3d 621 (6th Cir. 2005). [emphasis added]

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[6] The last case the Fifth Circuit heard on the issue relating to Due Process prior to the Collection of Tax was *Jones v. C.I.R.*, 338 F.3d 463 (5th Cir. 2003), which was decided approximately three weeks prior to the *Rayner v. Commissioner*, decision.

Thus, explaining why the 5th Cir. has, in effect, given-up on making any judicial review of tax related due process claims by simply stating that they "*do not merit any serious consideration.*" As a result, the Petitioner, like many others, is left wondering where her right to due process went; thereby necessitating this Court's need to answer the first four questions posed at the beginning of this Petition:

1. Whether the Fifth Circuit erred by departing from the fundamental principles of judicial review by overlooking the minimum standards related to Due Process for Collections of tax mandated by Congress [codified at I.R.C. §6330(c)(1)], which requires review of the "verification from the Secretary ['a written declaration made under the penalties of perjury', see I.R.C. §6065] that the requirements of any applicable law or administrative procedure have been met"?

2. Whether the "Due Process" provisions of the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA") overrule this Courts long standing precedence that the collection of tax by distraint of personal property prior to any due process of law is lawful so long as a hearing is granted thereafter?

3. Whether the RRA guarantees (to the person who timely requests a hearing) a right to a fair hearing before an appeals officer, prior to any lien, levy or distraint of personal property for collection of taxes can occur?

4. Whether RRA, codified in part at I.R.C. §6330(c)(1), which states "The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met", is a congressional mandate to the Internal Revenue Service Office of Appeals that creates the "minimum standard" for Due Process for Collection hearings?

Frankly, it doesn't take much to meet the minimum standard judicial review requirements arising from a Due Process for Collection hearing; it only requires the Court to review two or, at most, three documents:

1) A "verification" [in conformance with the verification mandates codified in I.R.C. §6065] executed by the Secretary, [in conformance with the mandates codified in I.R.C. §6330(c)(1)], and

2) A declaration from the appeals officer of the Internal Revenue Service stating:

a) advanced Notice of time, date and place for the Collection Due Process hearing was given;

b) the hearing was held on the time and date. and at the place given in the Notice

c) the Secretary provided a verification "that the requirements of any applicable law or administrative procedure have been met."

3) A "rebuttal" declaration made by the petitioner of said Collection Due Process hearing.

Hence, a Court only needs to review up to three simple declarations, each subscribed under penalty of perjury, by the Secretary, the Internal Revenue Service appeals officer, and the Petitioner to meet the minimum standard judicial review requirements arising from a Due Process for Collection provisions enacted in to law under the RRA98.

It is important to remember that the case in chief was decided on a motion for summary judgment, even though there are substantial issues of material fact still in dispute, as a result of the Secretary's failure to make a verification (pursuant to RRA98) and the failure of an Internal Revenue Service appeals officer to hold the Collection Due Process hearing at the date, time and place Noticed.

As discussed earlier, the Petitioner was not afforded a fair opportunity for hearing in connection with the collection of taxes because the Respondent failed in his

statutory duty, pursuant to I.R.C. §§6320(b), 6330(b)-(c), 6331(j)(2)(A), to see that the Petitioner was afforded a fair opportunity for hearing in connection with the collection of tax with proper notice and participation of the Secretary to the extent necessary to verify that the requirements of any applicable law or administrative procedure have been met.

II. THE TAX COURT ERRED IN GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AS THE EVIDENCE PRESENTED SUBSTANTIAL AND MATERIAL FACTUAL DISPUTES.

Three substantial and material fact issues still exist:

1) Whether the documents purporting to be notices of deficiency were sent by the Secretary as mandated in I.R.C. §§6212(a), 7701(a)(11)(B)-(12)(A)(i);

2) Whether the Secretary made a determination as mandated under I.R.C. §§6201(a)(1), 6211(a)-(b), 6212(a);

3) Whether an unscheduled telephone call made by a Revenue Officer to the Petitioner's Certified Public Accountant (CPA), lasting only a few minutes, constituted a Due Process for Collection hearing in accordance with the Internal Revenue Service Restructuring and Reform Act of 1998, Title III, Subtitle E, Part I, §3401 Pub. L. 105-206, 112 STAT. 685, 746-750.

FACTUAL DISPUTE 1, PURPORTED NOTICES OF DEFICIENCY

The Respondent failed to prove beyond dispute that the two documents purporting on their face to be notices of deficiency were valid and in fact constituted Statutory Notices of Deficiency. In order to initiate tax collection proceedings, the Secretary is required to make a lawful determination and send a valid notice of deficiency to a taxpayer; see I.R.C. §§6212(a) and 7701(a)(11)(B)-(12)(A)(i). It would appear from the signature, printed name and position/title shown on the face of said documents that an IRS employee named Cherry Elder, holding the position/title of "Territory Manager", sent

them to the Petitioner[7]. However the Respondent claims that it was another IRS employee named Sharon K. Brown, whose name appears on the face of the said documents, as the "Person to Contact". However, neither one of them was acting in the capacity of the Secretary as mandated by I.R.C. §§6212(a), 7701(a)(11)(B)-(12)(A)(i) to make a determination and send the Petitioner a notice of deficiency; therefore said purported notices are void. That is, on October 7, 2003, and October 14, 2003, the Secretary of Treasury's disclosure office provided substantive evidence to the Petitioner that neither Ms. Elder or Ms. Brown were in delegated positions of authority to act as or on behalf of the Secretary in matters relating to making determinations and sending notices of deficiency. It is important to point out to the Court that the Secretary of Treasury's disclosure office notified the Petitioner within 90-days after receiving said documents[8]; that Cherry Elder, at the time the documents were sent to the Petitioner, was acting in the position/title of "Program Manager" (not Territory Manager as shown on the face of the documents) and Sharon K. Brown was acting in position/title of "Internal Revenue Agent" neither position/title being authorized to send or issue a notice of deficiency pursuant to the Secretary's Delegation Order 4-8;[9] therefore eliminating any potential claim of the Respondent that the Petitioner should have petitioned the Tax Court because of a presumption of the documents' correctness. That is, the substantive evidence provided to the Petitioner by the Secretary's disclosure office

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[7] In evidence at Petitioner's Reply, Dkt. 4, Ex. 8.

[8] In evidence, see Petitioner's Reply of Dkt. 4, Ex. 3. Note: Notices of deficiency are often referred to "90-day letters" because after mailing a valid notice of deficiency, the IRS must give the taxpayer ninety days to petition the Tax Court for a redetermination of the deficiency before making an assessment. 26 U.S.C. ' 6213(a).

[9] In evidence at Petitioner's Reply, Dkt. 4, Ex. 6

overcame the documents' presumption of correctness forcing the Petitioner to withdraw her efforts in petitioning the tax court since it did not have jurisdiction without a valid notice of deficiency being issued.

Therefore it is clear that a material question of fact exists as to whether the documents purporting to be notices of deficiency were valid and, in fact, Statutory Notices of Deficiency at all.

Disputed fact issues must be decided in favor of the non-moving party as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Accordingly, for purposes of determining summary judgment, the finder of fact was legally required to find that the documents purporting to be notices of deficiency were not sent by a person authorized to send them under Delegation Order No. 4-8. In other words, they were invalid and void.

The authority delegated by Delegation Order No. 4-8 may not be re-delegated. A party seeking summary judgment bears the initial burden of showing the district court that there is an absence of a genuine dispute over any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986). This burden may be discharged either by producing evidence showing the absence of a genuine issue of material fact or by " 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." Id. at 325, 106 S.Ct. at 2554. In order to defeat a motion for summary judgment after the movant has carried its initial burden, the nonmoving party must present some "specific facts showing that there is a genuine issue for trial." Id. at 324, 106 S.Ct. at 2553 (quoting Fed.R.Civ.P. 56(e)). The Petitioner – the non-moving party herein – has done so, by introducing evidence that Cherry Elder is a "Program Manager", and introducing Delegation Order No. 4-8.

It is conveniently claimed by the Respondent that Cherry Elder (a Program Manager) was "reassigned" to

permit her to sign such documents.[10] This would constitute a plain re-delegation of the delegated authority which Delegation Order No. 4-8 says cannot be further delegated. However and more profoundly, the Respondent has never produced any evidence that Cherry Elder was, in fact, "reassigned" and so authorized. The burden of proof for summary judgment has simply not been met.

The evidence that Cherry Elder did not bear a job title or position authorized to sign any statutory notices of deficiency is a specific fact showing that there is a genuine issue for trial. It is not conclusive, perhaps – but it is relevant and material. The non-movant need not prove beyond peradventure that she would prevail on the issue at trial; she must only demonstrate there is some substantial evidence to support her position. As the Petitioner has amply met this standard; the grant of summary judgment was erroneous.

The Respondent also contends that Sharon K. Brown, and not Cherry Elder, signed Cherry Elder's name to the purported notices of deficiency. Again, this would constitute a plain re-delegation of authority which Delegation Order No. 4-8 forbids. Thus, it would constitute an unlawful re-delegation of authority.

Finally, the Respondent contends that Sharon K. Brown, an Internal Revenue Agent, was authorized to sign and send the purported Statutory Notice of Deficiency. While the CIR has flexibility in assigning his staff, he may not use this flexibility to undermine Delegation Order No. 4-8. An actor playing a doctor on television is no more authorized to write prescriptions than any internal revenue agent playing the part of a Revenue Agent Reviewer is to send out statutory notices of deficiency. The position may not be re-delegated.

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[10] In evidence at Respondent's Motion for Summary Judgment, Dkt. 10, Ex. 6.

Either an individual holds a document Position/Title office, or they do not. A manager on vacation may have an assistant manager run the department in his absence; items that can only be acted on by a manager will have to await the manager's return. The CIR has the authority to promote an individual to the position of Revenue Agent Reviewer or Territory Manager - he does not have the authority to re-delegate the authority of a Revenue Agent Reviewer to any employee at whim by having that employee "fill in" for the actual Territory Manager or Revenue Agent Reviewer. To do so would violate the clear language of Delegation Order No. 4-8.

FACTUAL DISPUTE 2, DETERMINATION BY THE SECRETARY

I.R.C. §§6201(a)(1), 6211(a)-(b), 6212(a) set out, prima facie, the Secretary's lawful "determination" and "deficiency" procedures. In addition I.R.C. §6020(b), sets out, prima facie, the procedures for the Secretary to make a return when a return has not been made, is false or fraudulent. "Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes", I.R.C. §6020(b)(2), including the lawful requirements to make a "determination" for a "deficiency".

The Petitioner and her husband hired Counsel who, in turn, hired Certified Public Accountants to make joint returns, pursuant to I.R.C. §§6011 and 6012 for the tax years 1997-2001. Said returns were much later claimed "unprocessable" by I.R.S. Counsel[11]. If said returns were

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[11] On Tuesday July 19, 2005, IRS counsel admitted, in a conference with the Petitioner's husband and U.S. Tax Court Judge Mark V. Holmes, having possession of said joint-returns, but claimed they were "unprocessable". The Petitioner's husband objected to IRS counsel's claim of "unprocessablity" and Judge Holmes ordered IRS counsel to produce the joint-returns at their office on August 8, 2005. When the Petitioner's husband and the Petitioner's lawyer went to the IRS Counsel's

in fact "unprocessable", the Secretary had a duty, pursuant to I.R.C. §6020(b), to make a return and subscribe his name thereto in order for him to make a determination as required by I.R.C. §§6201(a)(1), 6211(a)-(b), 6212(a). The Secretary made no such subscribed returns or amended returns as evidenced by the Secretary's response to the Petitioner's FOIA / Privacy Act Request[12] for production of the Form 1040, 1040A or 1040X returns purportedly made and used as the basis for the Secretary's determination that the Petitioner had a tax liability to the United States. Hence, the Secretary did not make, review (examine) or amend any returns made by or on behalf of the Petitioner from which a deficiency could arise, and therefore, the purported claim of a deficiency by the Respondent is utterly false. Accordingly, this case must be REVERSED and REMANDED for further proceedings

FACTUAL DISPUTE 3, PURPORTED DUE PROCESS HEARING

The Affidavit of Wayne A. Paul[13] and the Declaration of Wallace G. Banks are factually consistent in that:

1) An unscheduled and un-noticed telephone call was made by Mr. Banks to Mr. Paul at 10:00 AM on August 30, 2004;
2) The Notice and subsequent letter confirming the Collection Due Process Hearing (CDPH) set a date and time certain of 1:00 p.m. on August 30, 2004.

Further the Affidavit of Wayne A. Paul indicates that he timely objected to the unscheduled 10:00 a.m. telephone call from Mr. Banks as representing a CDPH

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office, the IRS counsel was conveniently absent. The IRS never produced the claimed "unprocessable" returns.

[12] The Petitioner received ten FOIA response letters, stating "In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X or Form 1040A/1040 ... for the [1997 – 2001] tax year[s]".

[13] In evidence at Petitioner's Reply, Dkt. 4, Ex. 16, pgs. 1-2

when he stated "*[N]o, we cannot hold the CDPH right now as I am not in my office, nor [i]s Michelle Selgas available.*"

Thus the outstanding factual question to be answered is: whether an unscheduled and un-noticed telephone call, which was timely objected too, constitutes a collection due process hearing (pursuant to RRA98)?

Hence, there exists a disputed material question of fact as to whether a collection due process hearing was in fact conducted. And for that reason, summary judgment was inappropriate and the Tax Court erred.

The Respondent, and the Tax Court, obfuscated this issue by emphasizing the lack of evidence as to whether Mr. Paul or the Petitioner attempted to personally contact Mr. Banks at the time Mr. Banks scheduled the hearing. This is a red herring, which goes nowhere. The notice, subsequent confirmation letter and the statement made by Mr. Paul to Mr. Banks specifically stated that Mr. Banks would call Mr. Paul's office.[14]

CONSTITUTIONAL MATTERS OF DUE PROCESS

The Respondent proclaims in a footnote that the 5th Amendment right to Due Process of Law is inapplicable in a Collection Due Process Hearing, because the hearing itself is statutory, not constitutional. This is strange indeed; the right to an appeal is both statutory, and constitutional. Would the Respondent then argue that to deny the Petitioner an appeal would not infringe on her Constitutional right to due process of law? Would it comply with principles of Due Process of Law for this Honorable Court to set deadlines for submission of briefs and not publish those deadlines? Or to set oral argument

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[14] In evidence at Petitioner's Reply, Dkt. 4, Ex. 16, pgs. 1-2; and Respondent's Motion for Summary Judgment, Dkt. 10, Exs. C-D

on a case without providing both parties the opportunity to appear and be heard?

The Petitioner has a due process right to have the laws fairly and impartially administered. Arbitrarily denying a statutory right is a violation of the Due Process Clause.

As Justice Scalia has noted, due process guarantees that all persons will receive that process which is due. See *Schad v. Arizona*, 501 U.S. 624, 651 (1991) (Scalia, J., concurring); see also *People's Mojahedin Org. of Iran v. Dep't of State*, 327 F.3d 1238, 1242 (D.C. Cir. 2003)("[t]he Due Process Clause requires only that process which is due under the circumstances of the case. . ."). As the Eighth Circuit noted in *Robinette v. Commissioner of I.R.S.*, 439 F.3d 455 (8th Cir. 2006), the Collection Due Process hearing was created as a consequence of Congress' concern with potential abuses by the I.R.S. in their administrative authority to seize a taxpayer's property. See *Robinette*, 439 F.3d at 458. The Collection Due Process Hearing is, under I.R.C. §6330, part of the process which was due under the circumstances of this case.

Congress said the Petitioner shall be granted a due process hearing.

The Petitioner had a Due Process right to be heard. "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914). The Respondent arbitrarily and capriciously denied the Petitioner the right to be heard in person. There clearly exists a factual dispute as to whether she was heard through her representative, Mr. Paul.[15] This factual dispute was material, as the Tax Court was in the position of determining whether to disturb the outcome of

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[15] In evidence at Petitioner's Reply, Dkt. 4, Ex.s 16, 17; Transcript, Dkt. 23, pg. 8, lines 12-23; pg. 13, lines 19-21

a proceeding that may never have been held. Because a material factual dispute existed as to whether a Collection Due Process Hearing was ever conducted, summary judgment was inappropriate in this cause and the cause must be REVERSED and REMANDED.

III. THE TAX COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO GRANT THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.

Tax Court Subject Matter Jurisdiction[16] rises and falls on the issuance of a lawfully valid "Statutory Notice of Deficiency" pursuant to I.R.C. §6212(a), which states:

> If the **Secretary determines** that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 **he is authorized** to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office. [emphasis added]

To establish that the Tax Court did NOT have subject matter jurisdiction to grant the Respondent's motion for summary judgment in the Case in Chief, this Court simply needs to answer the question: **'Who is authorized to <u>send</u> "notice of such deficiency to the taxpayer by certified mail or registered mail", pursuant to I.R.C. §6212(a)'?** This question has never been answered by this Court or the Cir. Courts, which have consistently chosen to hear a different question, which will be discussed below. However this case clearly rests on the clear and unambiguous language of I.R.C.

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[16] A notice of deficiency to the taxpayer [is] a jurisdictional prerequisite to Tax Court, *Laing v. U.S.*, 423 U.S. 161 (1976)

§6212(a) that it can simply be paraphrased as follows: "*The person*[17] *who makes the determination of a deficiency of tax is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.*" Thus imploring this Court to ask the five questions shown in the left hand column of the table below as it relates to I.R.C. §6212(a):

Who is the person?	Cherry Elder	Sharon Brown
Did the person have delegated authority from the Secretary to make a determination of a tax deficiency?	No	No
Was a determination (*the review and approval of a subscribed return*) of a deficiency of tax made?	No	No
Was a determination of a deficiency of tax made by the authorized delegate?	No	No
Did the person who made the determination of a deficiency of tax send the notice of such deficiency?	No	No

Setting aside the provision of I.R.C. §§6861 and 6851 (jeopardy and termination assessments), which are not applicable to this case, it is clear that the determination of a deficiency of tax can only occur with the creation of a subscribed return as shown in the chart below.

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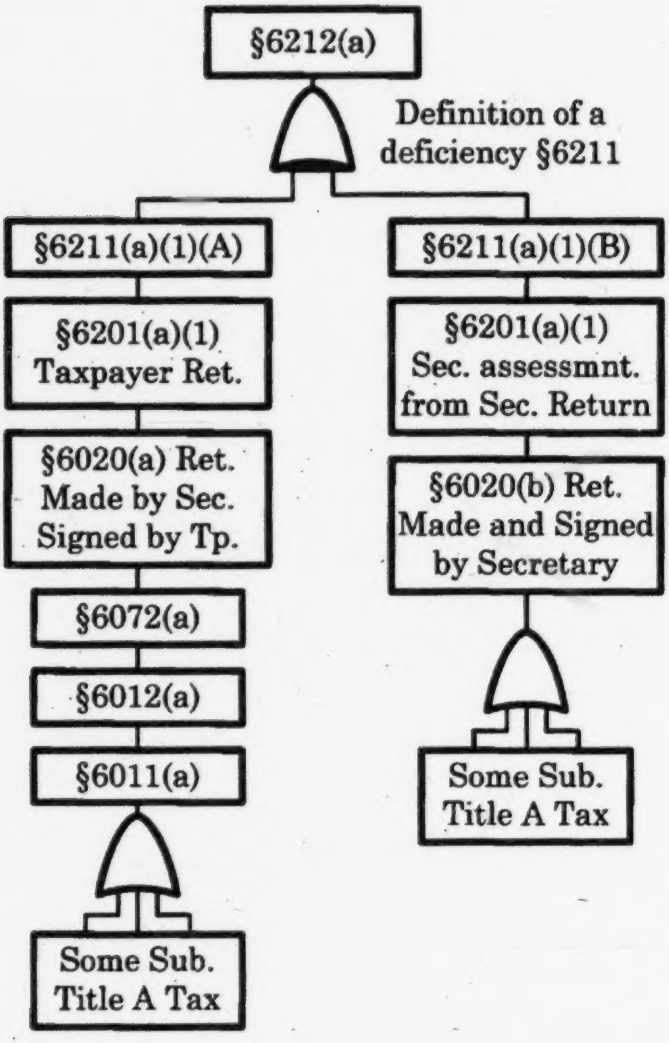
[17] The word "person", as used in the paraphrase, means one with delegated authority from the Secretary of Treasury to perform the prescribed function on his behalf.



Therefore, reviewing the evidence provided to the Petitioner by the Secretary's disclosure office – which was discussed in great detail earlier and is summarized in the preceding table as a convenience to the Court – it should be patently obvious that the documents the Respondent alleges were sent to the Petitioner as "notice(s) of deficiency", by Cherry Elder, or Sharon Brown, could not have been "*notice[s] of such deficiency*" or "Statutory Notices of Deficiency" since they did not meet the most basic mandates of Congress as set forth in I.R.C. §6212(a).

That is, neither Ms. Elder nor Ms. Brown, were authorized to act in the capacity of the Secretary to make a determination of a deficiency of tax and send a notice of such deficiency to the Petitioner.

CONCLUSION

For the foregoing reasons, the Petitioner, Michelle Leigh Selgas prays that this Court grant her petition for writ of certiorari.

Respectfully submitted,

/s/ Michelle Leigh Selgas

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April 20, 2007.

APPENDIX A

Docket No. 18495-04L.

United States Tax Court Washington, DC 20217
MICHELLE LEIGH SELGAS, Petitioner
v.
Commissioner of Internal Revenue, Respondent

This case arises from a petition for judicial review under section 6330[1]. The issue is the propriety of respondent's decision to proceed with collection of income tax against petitioner for the years 1997, 1998, 1999, 2000, and 2001. The parties have filed cross motions for summary judgment pursuant to Rule 121. At the time the petition was filed, petitioner was a legal resident of the State of Texas. A hearing was held on the motions at the Court's trial session at Dallas, Texas.

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corn. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy 'if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." Rule 1 2 1 (b) ; Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Petitioner is married. She did not file Federal income tax

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

returns for the years in question. Respondent issued a notice of deficiency to petitioner for the years 1997, 1998, and 1999, and another notice of deficiency for the years 2000 and 2001. No petition was ever filed with this Court with respect to both notices, nor have any judicial proceedings been instituted by petitioner in any other court. The determined deficiencies and additions to tax and penalties have not been paid and are as follows:

Year	Deficiency	Sec 6651(a)(1)	Sec. 6654
1997	2,381.00	584.25	124.77
1998	1,781.00	445.25	--
1999	1,241.00	310.25	--
2000	12,572.00	3,138.00	670.34
2001	12,293.00	3.067.00	490.15

The determinations by respondent shown above ,were based on substitute returns pursuant to section 6020(b). In due course, petitioner was assessed for the above amounts. This case arises over respondent's actions, pursuant to section 6330, to collect the assessed deficiencies and additions to tax/penalties. After demands on petitioner for payment were not honored, respondent issued a final notice of intent to levy and notice of your right to a hearing. Petitioner requested a hearing timely, which was conducted by telephone between a settlement officer for respondent and petitioner's authorized representative, a certified public accountant. Thereafter, respondent issued a notice of determination concerning collection action(s) under section 6320 and/or 6330. In the notice of determination, petitioner was denied relief on the ground that "you did not raise any issues that were relevant to paying your tax liability. Rather, you had only raised frivolous issues, which we could not address during a collection due process hearing." The notice of determination also states that petitioner was not offered a faceto-face hearing because, based upon the positions taken by her representative at the hearing, a face-to-face hearing would serve no useful purpose. Petitioner's

representative had taken the position that the notices of deficiency were not signed by a duly authorized officer; that a "Code 494" was not posted to petitioner's account with the Internal Revenue Service; that respondent made a "naked assessment" of the deficiencies; that the claimed taxes were paid in full by two checks issued by "Chipdata, Inc."; that petitioner, a housewife, was not gainfully employed during the years in question and was not otherwise engaged in any taxable activity during the years in question; and that respondent failed to state the particular taxing statute under which petitioner is liable, along with the applicable regulations or that she is a "taxpayer". The notice of determination also stated that the computer records of the Internal Revenue Service showed that the tax liabilities were unpaid, and that the claimed payments by Chipdata, Inc., were in fact payments of tax liabilities owing by that corporation and were not payments to be credited to petitioner's account. In summary, the notice of determination concluded that petitioner's claims, voiced through her representative, were frivolous, groundless, irrelevant or without merit, and that any action by petitioner in this Court with these same arguments could subject her to monetary sanctions of up to $25,000.00. Petitioner was denied relief.

In her petition to this Court, petitioner alleged:

> Petitioner's relief sought: (1) A Redetermination to set aside Deficiency (2) All administrative costs, (3) All court costs. Petitioner seeks relief because (1) The alleged tax is fully paid; (2) The evidence in the Administrative record shows: (a) the alleged tax has been paid; (b) the alleged deficiency is based upon a naked assessment as evidenced by the lack of valid supporting documents required to verify and support "Transaction Codes", "Document Codes" and "blocking Codes" listed in the Individual Master File; (c) The administrative

record has been tampered with or the IRS' computer systems still have severe programming bugs; (d) The IRS computer data entry control notices to administer Petitioner's administrative file are non-existent or missing; (e) The Petitioner did not receive a Statutory Notice of Deficiency nor a due process hearing.

A hearing was held on the parties' cross motions for summary judgment. The issues before the Court are:

(1) Whether the notices of deficiency to petitioner are valid;

(2) Whether petitioner was accorded a valid section 6320/6330 due process hearing;

(3) Whether the taxes at issue have been paid; and

(4) Whether substitute returns prepared by the Internal Revenue Service under section 6020(b) are valid.

Where the underlying tax liability is properly at issue, this Court reviews that issue de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). If the taxpayer did not receive a notice of deficiency, the taxpayer may challenge the underlying tax liability as part of the collection due process appeal. Sego v. Commissioner, 114 T.C. 604, 609 (2000); Goza v. Commissioner, supra. In this situation, this Court reviews the collection due process determinations under an abuse of discretion standard. Sego v. Commissioner, supra. An abuse of discretion is defined as any action that is unreasonable, arbitrary or capricious, clearly unlawful, or lacking sound basis in law, taking into account all the facts and circumstances. Thor Power Tool Co. v. Commissioner, 439 U.S. 522, 532-533 (1979); Swanson v. Commissioner, 121 T.C. 111, 119 (2003).

With respect to the first issue, whether the notices of deficiency are valid, and whether petitioner received such

notices, the Court concludes that petitioner physically received both notices by her own admission in an affidavit filed with the Court dated April 7; 2005, which is attached to her amended petition in which she states: "On or about July 16, 2003, I received two documents purported to be notices of deficiency". Petitioner, therefore, does not dispute physically receiving the notices of deficiency but challenges their legality and validity, alleging that the individual who signed the notices was without authority to do so, and that the Internal Revenue Service records of her taxpayer account do not reflect entry of "Transaction Code 494". Petitioner cites no legal authority to support her position. Respondent contends that Transaction Code 494 was posted to petitioner's account when the notices of deficiency were sent out. As the Court understands, Transaction Code 494 is the entry by respondent on a taxpayer's tax account that reflects the issuance of a notice of deficiency. The parties have cited no statute or cases addressing what rights, if any, are afforded or not afforded to a taxpayer by Transaction Code 494 or its omission. In Wiley v. Commissioner, 20 F.3d 222 (6th Cir. 1994), the Court noted that the transaction code normally records the date the statutory notice was sent. A failure, therefore, for the transaction code to be entered on a taxpayer's account might indicate or show that a notice of deficiency was not sent. The parties have advanced no other rationale for transaction code 494. Petitioner's contention, therefore, is a nonissue because, by affidavit, she acknowledged receiving the two statutory notices. The statutory notices, therefore, "were sent". Petitioner also contended that the notices were invalid because the person who signed the notices had no authority. Case law is very broad as to what constitutes a notice of deficiency. In McGarvie v. Commissioner, T.C. Memo. 1988-85, the Court held that all that is required is that a notice of deficiency provide formal notification that a deficiency in tax has been determined, and that "the Commissioner means to assess him; anything that does this

unequivocally is good enough." Moreover, the Court pointed out in that case that a challenge to the validity of the notice of deficiency is a request for the Court to look behind the notice of deficiency, and the Court will not look behind the notice to examine the evidence used, the propriety of respondent's motives, and the administrative policy or the procedure followed by the Commissioner in the determinations of a notice of deficiency. Moreover, the cases hold that a notice of deficiency is not invalid because it was not signed by the Commissioner or anyone else. Pendola v. Commissioner, 50 T.C. 509 (1968). The Court holds, therefore, that the notices of deficiency issued to petitioner are valid.

Petitioner next contends she was not accorded a valid due process hearing. She voices no objection that her representative was authorized to represent her at the hearing; however, she argues that, on the designated date, the hearing was supposed to be at 1:00 p.m. and, instead, the appeals officer called petitioner's agent by telephone at 10:00 a.m. Petitioner voices objection to this change in the time because she intended to participate in the hearing, and, therefore, she was denied that opportunity. The Court does not view that as an egregious error by respondent. The Court is satisfied that petitioner and her representative could easily have requested a conference that would have allowed petitioner to participate. They did not do that, and, moreover, the Court is satisfied from the positions taken by petitioner before this Court that the outcome of the hearing would have been no different. The Court notes that neither petitioner nor her representative took any affirmative steps to contact the appeals officer thereafter to provide evidence that would have been relevant to the appeal. The Court, therefore, rejects petitioner's argument that her due process hearing was invalid. The Court does not view respondent's actions in this regard as an abuse of discretion. As a result of the issuance of valid notices of

deficiency and the failure of petitioner to petition this Court (or any other Court), petitioner is precluded under section 6330(c) (2) (B) from challenging the existence and amounts of the underlying tax deficiencies.

Petitioner next contends that the tax liabilities have been paid in full by two checks that were issued by a corporation or an entity referred to as Chipdata. This was addressed by the appeals officer who concluded that the claimed payments had been made but not for petitioner's account. Respondent correctly points out that this contention does not relate to the underlying liabilities (which are not at issue here) but relates to the collection of the unpaid tax. As such, the standard of review before this Court is whether there was an abuse of discretion by the appeals officer in arriving at this conclusion. The notice of determination reflects that the appeals officer reviewed all issues regarding the unpaid tax, including the application of payments and credits, and made the determination stated in the notice of determination. Petitioner has not shown or otherwise established an abuse of discretion by the appeals officer in making this conclusion.

Finally, petitioner questions the legality of respondent's authority to prepare substitute returns under section 6020(b).

Section 6020 (b) states:

(1) Authority of secretary to execute return.--If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. Petitioner did not file income tax returns for the years at issue.

Pursuant to section 6020(b), respondent prepared substitute returns. Those returns were prepared based on information that was made known to the Secretary. Notices of deficiency were issued to petitioner based on the substitute returns. Petitioner never filed a petition in this Court challenging the determinations in those notices. Respondent was authorized by the above Code provision to issue a notice of deficiency. Petitioner's argument, in effect, is an argument challenging the underlying deficiencies, which she is not allowed to do because the notices of deficiency were never challenged in Court. Petitioner's argument on this issue is rejected.

For the afore-stated reasons, it is

ORDERED that respondent's above-referenced motion for summary judgment is granted. It is further

ORDERED that petitioner's above-referenced motion for summary judgment is denied. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action as determined in the notice of determination concerning collection action for the taxable years 1997, 1998, 1999, 2000, and 2001.

D. Irvin Couvillion
Special Trial Judge

ENTERED: SEP 20, 2005

APPENDIX B

No. 05-61185

United States Court of Appeals,
Fifth Circuit.

MICHELLE LEIGH SELGAS,
Petitioner - Appellant,
versus
COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

Appeal from the United States Tax Court
NO. 18495-04

Before JOLLY, HIGGINBOTHAM, and DENNIS, Circuit Judges.

PER CURIAM:*

AFFIRMED. see 5th CIR. R. 47.6.

FILED: December 11, 2006

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* Pursuant to 5th CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR. R. 47.5.4.

APPENDIX C

No. 05-61185

United States Court of Appeals,
Fifth Circuit.

MICHELLE LEIGH SELGAS,
Petitioner - Appellant,
versus
COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

Petition for Review of an Order of the
Internal Revenue Service (Tax Ct)

ON PETITION FOR REHEARING

Before JOLLY, HIGGINBOTHAM, and DENNIS, Circuit Judges.
PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied

ENTERED FOR THE COURT:

Patt Higginbotham
United States Circuit Judge

FILED: January 23, 2007

APPENDIX D

The Internal Revenue Service Restructuring and Reform Act of 1998, Title III, Subtitle E, Part I; Pub. L. 105-206, 105th Cong., 2d Sess., 112 STAT. 685, 746-750

PART I—DUE PROCESS

SEC. 3401. DUE PROCESS IN INTERNAL REVENUE SERVICE COLLECTION ACTIONS.

(a) NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF

NOTICE OF LIEN.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting before the table of sections the following:

"Part I. Due process for liens.

"Part II. Liens.

"PART I—DUE PROCESS FOR LIENS

"Sec. 6320. Notice and opportunity for hearing upon filing of notice of lien.

"SEC. 6320. NOTICE AND OPPORTUNITY FOR HEARING UPON FILING

OF NOTICE OF LIEN.

"(a) REQUIREMENT OF NOTICE.—

"(1) IN GENERAL.—The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

"(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

"(A) given in person;

"(B) left at the dwelling or usual place of business of such person; or

"(C) sent by certified or registered mail to such person's last known address, not more than 5 business days after the day of the filing of the notice of lien.

"(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

"(A) the amount of unpaid tax;

"(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);

"(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals; and

"(D) the provisions of this title and procedures relating to the release of liens on property.

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

"(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection

(a)(3)(A) relates.

"(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

"(4) COORDINATION WITH SECTION 6330.—To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

"(c) CONDUCT OF HEARING; REVIEW; SUSPENSIONS.—For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), and (e) of section 6330 shall apply.

"PART II—LIENS".

(b) NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.—

Subchapter D of chapter 64 (relating to seizure of property for collection of taxes) is amended by inserting before the table of sections the following:

"Part I. Due process for collections.

"Part II. Levy.

"PART I—DUE PROCESS FOR COLLECTIONS

"Sec. 6330. Notice and opportunity for hearing before levy.

"SEC. 6330. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

"(a) REQUIREMENT OF NOTICE BEFORE LEVY.—

"(1) IN GENERAL.—No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

"(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

"(A) given in person;

"(B) left at the dwelling or usual place of business of such person; or

"(C) sent by certified or registered mail, return receipt requested, to such person's last known address; not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

"(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

"(A) the amount of unpaid tax;

"(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

"(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

"(i) the provisions of this title relating to levy and sale of property;

"(ii) the procedures applicable to the levy and sale of property under this title;

"(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

"(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

"(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

"(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection

(a)(3)(A) relates.

"(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

"(c) MATTERS CONSIDERED AT HEARING.—In the case of any hearing conducted under this section—

"(1) REQUIREMENT OF INVESTIGATION.—The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

"(2) ISSUES AT HEARING.—

"(A) IN GENERAL.—The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

"(i) appropriate spousal defenses;

"(ii) challenges to the appropriateness of collection actions; and

"(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

"(B) UNDERLYING LIABILITY.—The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

"(3) BASIS FOR THE DETERMINATION.—The determination by an appeals officer under this subsection shall take into consideration—

"(A) the verification presented under paragraph (1);

"(B) the issues raised under paragraph (2); and

"(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

"(4) CERTAIN ISSUES PRECLUDED.—An issue may not be raised at the hearing if—

"(A) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and

"(B) the person seeking to raise the issue participated meaningfully in such hearing or proceeding. This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

"(d) PROCEEDING AFTER HEARING.—

"(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination—

"(A) to the Tax Court (and the Tax Court shall have jurisdiction to hear such matter); or

"(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States. If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

"(2) JURISDICTION RETAINED AT IRS OFFICE OF APPEALS.—

The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

"(A) collection actions taken or proposed with respect to such determination; and

"(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

"(e) SUSPENSION OF COLLECTIONS AND STATUTE OF LIMITATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing.

"(2) LEVY UPON APPEAL.—Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend

the levy.

"(f) JEOPARDY AND STATE REFUND COLLECTION.—If—

"(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy; or

"(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund, this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

"PART II—LEVY".

(c) REVIEW BY SPECIAL TRIAL JUDGES ALLOWED.—

(1) IN GENERAL.—Section 7443(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking "and" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph

(3) the following new paragraph:

"(4) any proceeding under section 6320 or 6330, and".

(2) AUTHORITY TO MAKE DECISIONS.—Section 7443(c) (relating to authority to make court decisions) is amended by striking "or (3)" and inserting "(3), or (4)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to collection actions initiated after the date which is 180 days after the date of the enactment of this Act.

APPENDIX E

INTERNAL REVENUE CODE SECTIONS: 6020, 6065, 6201, 6211, 6212, 7701(a)(11)-(12)

CHAPTER 61 - INFORMATION AND RETURNS

Subchapter A - Returns and Records

PART II - TAX RETURNS OR STATEMENTS

Subpart D - Miscellaneous Provisions

****

§6020. Returns prepared for or executed by Secretary

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this titleor by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

PART IV - SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS

§6065. Verification of returns

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document

required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

CHAPTER 63 - ASSESSMENT

Subchapter A - In General

****

§6201. Assessment authority

(a) Authority of Secretary

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp

(A) Omitted stamps

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary determines to be liable for such tax.

(B) Check or money order not duly paid

In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) Erroneous income tax prepayment credits

If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.

(b) Amount not to be assessed

(1) Estimated income tax

No unpaid amount of estimated income tax required to be paid under section 6654 or 6655 shall be assessed.

(2) Federal unemployment tax

No unpaid amount of Federal unemployment tax for any calendar quarter or other period of a calendar year, computed as provided in section 6157, shall be assessed.

(c) Compensation of child

Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section73(a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) Required reasonable verification of information returns

In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

(e) Deficiency proceedings

For special rules applicable to deficiencies of income, estate, gift, and certain excise taxes, see subchapter B.

Subchapter B - Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

****

§6211. Definition of a deficiency

(a) In general

For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the excess of -

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over -

(2) the amount of rebates, as defined in subsection (b)(2), made.

(b) Rules for application of subsection (a)

For purposes of this section -

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, without regard to the credit under section 33, and without regard to any credits resulting from the collection of amounts assessed under section 6851 or 6852 (relating to termination assessments).

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitle A or B or chapter 41, 42, 43, or 44 was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

(3) The computation by the Secretary, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

(4) For purposes of subsection (a) -

(A) any excess of the sum of the credits allowable under sections 24(d), 32, and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits), shall be taken into account as negative amounts of tax.

(c) Coordination with subchapters C and D

In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapters C and D.

§6212. Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency

(1) Income and gift taxes and certain excise taxes

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last

known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted

(1) General rule

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of -

(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C) Deficiency attributable to activities not engaged in for profit, see section 183(e)(4). For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code.

(d) Authority to rescind notice of deficiency with taxpayer's consent The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to

the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

Subtitle F - Procedure and Administration
CHAPTER 79 - DEFINITIONS
****

§7701. Definitions
(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof -

(11) Secretary of the Treasury and Secretary

(A) Secretary of the Treasury

The term "Secretary of the Treasury" means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary

The term "Secretary" means the Secretary of the Treasury or his delegate.

(12) Delegate

(A) In general

The term "or his delegate" -

(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii) when used with reference to any other official of the United States, shall be similarly construed.

APPENDIX F

Selected FOIA Responses from the
Secretary's Disclosure Office

RESPONSE: To request for the 1997 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

> ... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040A/1040 that was received on August 10.2002 for the 1997 tax year.
>
> Please find enclosed Notice 393 explaining your appeal rights. If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01442.
>
> Sincerely,
>
> Tim D. Christian
> Badge Number 62-09241
> Nashville Disclosure Officer
> Governmental Liaison and Disclosure

RESPONSE: To request for the 1997 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

> ... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X for the 1997 tax year. Please find enclosed Notice 393 explaining your appeal rights.
>
> If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01443.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 1998 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040/1040A that was received on August 10, 2002 for the 1998 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01451.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 1998 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X for the 1998 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615)

250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01444.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 1999 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040/1040A that was received on August 10, 2002 for the 1999 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01450.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 1999 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form

1040X for the 1999 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01445.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 2000 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040A/1040 that was received on August 10,2002 for the 2000 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01448.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 2000 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X for the 2000 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801

Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01446.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 2001 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040A/1040 that was received on August 10,2002 for the 2001 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01449

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 2001 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

> ... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X for the 2001 tax year. Please find enclosed Notice 393 explaining your appeal rights.
>
> If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01447.
>
> Sincerely,
>
> Tim D. Christian
> Badge Number 62-09241
> Nashville Disclosure Officer
> Governmental Liaison and Disclosure